REMARKS

The Examiner is thanked for the thorough examination of the present application. The Office Action mailed January 25, 2008 rejected claims 1-22. This is a full and timely response to that outstanding Office Action. Claims 1-22 remain pending.

I. **Present Status of Patent Application**

Claims 1-22 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as allegedly being unpatentable over claims 7-8, 10, 12-16, 21-23, and 25-30 of copending application no. 11/314,045. Claims 1, 3-15, 17, and 19-22 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over *McDuff, et al.* (U.S. Patent No. 6,490,350). Claims 2, 16, and 18 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over *McDuff, et al.* (U.S. Patent No. 6,490,350) in view of *Stuart, et al.* (U.S. Publication No. 2001/0032120). These rejections are respectfully traversed.

II. **Provisional Double-Patenting**

The Office Action rejects claims 1-22 on the ground of non-statutory obviousness-type double patenting as allegedly being unpatentable over claims 7-8, 10, 12-16, 21-23, and 25-30 of copending application no. 11/314,045. As this is a provisional rejection, Applicant will submit a terminal disclaimer upon indication of otherwise allowable subject matter, assuming such is still needed at that point.

III.   Rejections Under 35 U.S.C. §103(a)

A.   Claims 1-7

The Office Action rejects claims 1 and 3-7 under 35 U.S.C. §103(a) as allegedly

being unpatentable over *McDuff, et al.* (U.S. Patent No. 6,490,350). The Office Action

rejects claim 2 under 35 U.S.C. §103(a) as allegedly being unpatentable over *McDuff, et*

al. (U.S. Patent No. 6,490,350) in view of *Stuart, et al.* (U.S. Publication No.

2001/0032120).

Independent claim 1 recites:

1.   A payroll system comprising:
logic configured to obtain a set of switching statistics from a database of a
    communications switch;
logic configured to obtain a set of work statistics of an operator;
logic configured to determine an operator efficiency parameter by
    integrating the set of switching statistics with the set of work
    statistics;
logic configured to determine when the operator efficiency parameter
    exceeds an expected efficiency parameter.
(Emphasis added).

Applicant respectfully submits that claim 1 is patentably distinct from the cited art for

at least the reason that the cited art does not disclose the features emphasized above. For

a proper rejection of a claim under 35 U.S.C. §103, the cited combination of references

must disclose, teach, or suggest all elements/features of the claim at issue. *See, e.g., In re*

Dow Chemical, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988) and *In re Keller*, 208 U.S.P.Q.2d

871, 881 (C.C.P.A. 1981).

Applicant respectfully submits that independent claim 1 is allowable for at least

the reason that *McDuff* does not disclose, teach, or suggest at least **logic configured**

to determine an operator efficiency parameter by integrating the set of switching statistics with the set of work statistics. Even if, assuming for the sake of argument, *McDuff* discloses the gathering of general statistics, *McDuff* fails to disclose the specific function of integrating the set of switching statistics with the set of work statistics. Moreover, Applicant respectfully submits that the function of integrating is not obvious in light of *McDuff*. Applicant respectfully submits that without using hindsight gleaned from Applicant's disclosure, gathering useful data fails to suggest determining operator efficiency from the data. The data is simply collected and reported. Agent efficiency levels are never even alluded to in *McDuff*. Moreover, since *McDuff* fails to suggest the determination of operator efficiency, *McDuff* certainly fails to determine whether the operator efficiency exceeds an expected efficiency level.

The Office Action admits that the reference does not directly disclose integrating the set of switching statistics with the set of work statistics to determine an operator efficiency parameter. However, the Office Action alleges that the element is obvious because the reference discloses (1) gathering statistics regarding agent calling activity, (2) statistics gathered include average handling time, average work time, average talk time, etc., and (3) the statistics are used to generate reports useful to a supervisor or other manager. Applicant respectfully asserts that a report that presents the raw data in a pie chart or a graphical representation is useful to a supervisor and manager. *McDuff* doesn't suggest any more than presenting the statistics in a report. *McDuff* doesn't mention operator efficiency at all. *McDuff* surely doesn't suggest integrating one particular statistic with a second particular statistic to determine operator efficiency. As

the cited reference does not disclose, teach, or suggest, either implicitly or explicitly, all the elements of claim 1, the rejection should be withdrawn for at least that reason.

For at least the reason that independent claim 1 is allowable over the cited references of record, dependent claims 2-7 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that dependent claims 2-7 contain all the features of independent claim 1. *See Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, the rejection of claims 2-7 should be withdrawn and the claims allowed.

Additionally, with regard to the rejection of claim 2, *Stuart* does not make up for the deficiencies of *McDuff* noted above. Therefore, claim 2 is considered patentable over any combination of these documents for at least the reason that claim 2 incorporates allowable features of claim 1 as set forth above.

B.   Claims 8-16

The Office Action rejects claims 8-15 under 35 U.S.C. §103(a) as allegedly being unpatentable over *McDuff, et al.* (U.S. Patent No. 6,490,350). The Office Action rejects claim 16 under 35 U.S.C. §103(a) as allegedly being unpatentable over *McDuff, et al.* (U.S. Patent No. 6,490,350) in view of *Stuart, et al.* (U.S. Publication No. 2001/0032120).

Independent claim 8 recites:

> 8.   A method of operating a payroll system, the method comprising:
>   obtaining a set of switching statistics from a database of a communications switch;
>   obtaining a set of work statistics of an operator;
>   ***determining an operator efficiency parameter by integrating the set of switching statistics with the set of work statistics***;
>   providing a bonus payment to the operator when the operator efficiency parameter exceeds an expected efficiency parameter.

(Emphasis added).

Applicant respectfully submits that claim 8 is patentably distinct from the cited art for at least the reason that the cited art does not disclose the features emphasized above. Applicant respectfully submits that independent claim 8 is allowable for at least the reason that *McDuff* does not disclose, teach, or suggest at least **determining an operator efficiency parameter by integrating the set of switching statistics with the set of work statistics**. Even if, assuming for the sake of argument, *McDuff* discloses the gathering of general statistics, *McDuff* fails to disclose the specific function of integrating the set of switching statistics with the set of work statistics. Moreover, Applicant respectfully submits that the function of integrating is not obvious in light of *McDuff*. Applicant respectfully submits that without using hindsight gleaned from Applicant's disclosure, gathering useful data fails to suggest determining operator efficiency from the data. The data is simply collected and reported. Agent efficiency levels are never even alluded to in *McDuff*. Moreover, since *McDuff* fails to suggest the determination of operator efficiency, *McDuff* certainly fails to determine whether the operator efficiency exceeds an expected efficiency level.

The Office Action admits that the reference does not directly disclose integrating the set of switching statistics with the set of work statistics to determine an operator efficiency parameter. However, the Office Action alleges that the element is obvious because the reference discloses (1) gathering statistics regarding agent calling activity, (2) statistics gathered include average handling time, average work time, average talk time, etc., and (3) the statistics are used to generate reports useful to a supervisor or other manager. Applicant respectfully asserts that a report that presents the raw data in a pie chart or a graphical representation is useful to a supervisor and manager. *McDuff* doesn't suggest any more than presenting the statistics in a report. *McDuff* doesn't mention operator efficiency at all. *McDuff* surely doesn't suggest integrating one particular statistic with a second particular statistic to determine operator efficiency. As the cited reference does not disclose, teach, or suggest, either implicitly or explicitly, all the elements of claim 1, the rejection should be withdrawn for at least that reason.

For at least the reason that independent claim 8 is allowable over the cited references of record, dependent claims 9-16 (which depend from independent claim 8) are allowable as a matter of law for at least the reason that dependent claims 9-16 contain all the features of independent claim 8. Therefore, the rejection of claims 9-16 should be withdrawn and the claims allowed.

Additionally, with regard to the rejection of claim 16, *Stuart* does not make up for the deficiencies of *McDuff* noted above. Therefore, claim 16 is considered patentable over any combination of these documents for at least the reason that claim 16 incorporates allowable features of claim 8 as set forth above.

C.   Claims 17-22

The Office Action rejects claims 17 and 19-22 under 35 U.S.C. §103(a) as

allegedly being unpatentable over *McDuff, et al.* (U.S. Patent No. 6,490,350). The Office

Action rejects claim 18 under 35 U.S.C. §103(a) as allegedly being unpatentable over

McDuff, et al. (U.S. Patent No. 6,490,350) in view of *Stuart, et al.* (U.S. Publication No.

2001/0032120).

Independent claim 17 recites:

17.   A payroll system stored on a computer-readable medium, the system
comprising:
      computer-readable code that configures a device to obtain a set of
         switching statistics from a database of a communications switch;
      computer-readable code that configures the device to obtain a set of work
         statistics of an operator;
      computer-readable code that configures the device to determine an
         operator efficiency parameter by integrating the set of
         switching statistics with the set of work statistics;
      computer-readable code that configures the device determine when the
         operator efficiency parameter exceeds an expected efficiency
         parameter.
(Emphasis added).

Applicant respectfully submits that claim 17 is patentably distinct from the cited art

for at least the reason that the cited art does not disclose the features emphasized above.

Applicant respectfully submits that independent claim 17 is allowable for at least the

reason that *McDuff* does not disclose, teach, or suggest at least **computer-readable**

code that configures the device to determine an operator efficiency parameter by

integrating the set of switching statistics with the set of work statistics. Even if,

assuming for the sake of argument, *McDuff* discloses the gathering of general statistics,

McDuff fails to disclose the specific function of integrating the set of switching statistics

with the set of work statistics. Moreover, Applicant respectfully submits that the function

of integrating is not obvious in light of *McDuff.* Applicant respectfully submits that

without using hindsight gleaned from Applicant's disclosure, gathering useful data fails

to suggest determining operator efficiency from the data. The data is simply collected

and reported. Agent efficiency levels are never even alluded to in *McDuff.* Moreover,

since *McDuff* fails to suggest the determination of operator efficiency, *McDuff* certainly

fails to determine whether the operator efficiency exceeds an expected efficiency level.

The Office Action admits that the reference does not directly disclose integrating

the set of switching statistics with the set of work statistics to determine an operator

efficiency parameter. However, the Office Action alleges that the element is obvious

because the reference discloses (1) gathering statistics regarding agent calling activity,

(2) statistics gathered include average handling time, average work time, average talk

time, etc., and (3) the statistics are used to generate reports useful to a supervisor or

other manager. Applicant respectfully asserts that a report that presents the raw data in

a pie chart or a graphical representation is useful to a supervisor and manager. *McDuff*

doesn't suggest any more than presenting the statistics in a report. *McDuff* doesn't

mention operator efficiency at all. *McDuff* surely doesn't suggest integrating one

particular statistic with a second particular statistic to determine operator efficiency. As

the cited reference does not disclose, teach, or suggest, either implicitly or explicitly, all

the elements of claim 1, the rejection should be withdrawn for at least that reason.

For at least the reason that independent claim 17 is allowable over the cited references of record, dependent claims 18-22 (which depend from independent claim 17) are allowable as a matter of law for at least the reason that dependent claims 18-22 contain all the features of independent claim 17. Therefore, the rejection of claims 18-22 should be withdrawn and the claims allowed.

Additionally, with regard to the rejection of claim 18, *Stuart* does not make up for the deficiencies of *McDuff* noted above. Therefore, claim 18 is considered patentable over any combination of these documents for at least the reason that claim 18 incorporates allowable features of claim 17 as set forth above.

IV. <u>Miscellaneous Issues</u>

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known for the particular and specific reasons that the claimed combinations are too complex to support such conclusions and because the Office Action does not include specific findings predicated on sound technical and scientific reasoning to support such conclusions.

CONCLUSION

For at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-22 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

It is believed that no extensions of time or fees for net addition of claims are required, beyond those which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to deposit account No. 20-0778.

Respectfully submitted,

_____/BAB/_____
Benjamin A. Balser, Reg. No. 58,169

THOMAS, KAYDEN,
  HORSTEMEYER & RISLEY, L.L.P.
Suite 1500
600 Galleria Parkway N.W.
Atlanta, Georgia 30339
(770) 933-9500
Customer No.: 38823